IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4758 of 2006

Date of Decision: 9.01.2007

Gurmeet Singh Petitioner

Vs.

Chandigarh Transport Undertaking & Ors. Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Ms.Ekta Thakur, Advocate,
for the petitioner.

Mr.Sameer Sachdeva, Advocate,
for respondents No.1 and 2.

Vinod K.Sharma, J.

By way of present revision petition the petitioner has impugned order dated 26.7.2006 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short the Tribunal).

The petitioner herein had filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short the Act) seeking compensation for the injuries suffered by him in a motor vehicular accident. In the claim petition the claimant had claimed that his monthly income was Rs.9600/- and in addition thereto he had also been earning Rs.1500/- per month as over time income.

During the pendency of the claim petition an application was moved under Order 6 Rule 17 of the Code of Civil Procedure in order to reduce his pleaded income i.e. Rs.9600/- + Rs.1500/- to Rs.3200/- per month notionally and also to reduce his original claim of compensation from Rs.10 lacs to Rs.8 lacs. In support of his submissions, the petitioner had also relied upon the judgment of Karnataka High Court in the case of **Guruanna Vadi and another Vs. General Manager, Karnataka State Road Transport Corporation and another 2001 ACJ 1528** and also the judgment of this Court in **Gurmeet Kaur and others Vs. Hardeep Singh and another 2005 (2) RCR (Civil) 149** and claimed that the petitioner be allowed to scale down his claim in a petition filed under Section 163-A of the Act.

The petitioner had also placed reliance on the judgment of Karnataka High Court in the case of **Sulochana and others Vs. Karnataka State Road Transport Corporation 2005 ACJ 849** which laid down that a person whose annual income is beyond the maximum provided under the Second Schedule to the Act can maintain a claim petition under Section 163-A of the Act. The petitioner claimed that in view of the said judgment it was open to the petitioner to notionally bring down his income to Rs.40,000/- per annum.

The application was opposed by respondent No.3 i.e. the National Insurance Company Limited as well as respondents No.1 and 2 by relying upon the judgment of this Court dated 20.9.2005 in **FAO No.1115 of 2005** titled as **New India Insurance Company Limited Vs. Amit Mittal & another** in which reliance was made on **Deepal Girishbhai Soni and others Vs. United Insurance Company Ltd. 2004 ACJ 934 (SC)** wherein

it was held that a claim petition by a person whose net salary was Rs.9617/- was not maintainable under Section 163-A of the Act.

Learned Tribunal noticed the observation of the Hon'ble Supreme Court in the case of **Deepali Girishbhai Soni and others (supra)** wherein it was held as under:

> " The scheme as envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the afore-mentioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- or less is covered there under whereas sections 140 and 166 to all sections of society."

Learned Tribunal, therefore, on consideration of material placed on record came to the conclusion that as the annual income of the petitioner exceeded the limit of Rs.40,000/- therefore, he could not be held to be covered under the provisions of Section 163-A of the Act and therefore, it was not open to him to scale down the income and accordingly, dismissed the application for amendment.

Ms. Ekta Thakur, learned counsel for the petitioner placed reliance on the Division Bench judgment of Karnataka High Court in the case of **Sulochana and others Vs. Karnataka State Road Transport Corporation (supra)** to contend that the order passed by the learned

Tribunal cannot be sustained as it was open to the petitioner to notionally bring down his income to Rs.40,000/- per annum.

Mr. Sameer Sachdeva, learned counsel appearing for respondents No.1 and 2 supported the order passed by the learned Tribunal and contended that in view of the judgment of Hon'ble Supreme Court in the case of **Deepali Girishbhai Soni and others (supra)** the benefit of Section 163-A of the Act cannot be availed by the petitioner as his income was more than Rs.40,000/- per annum. The contention of the learned counsel for the respondents was that the provisions of Section 163-A of the Act are distinct and for the specified class of citizens whose annual income is Rs.40,000/- or less.

I have considered the arguments raised by the learned counsel for the parties and find no force in the contention raised by The learned counsel for the petitioner. The Division Bench of this Court in the case of **Himachal Road Transport Corporation and another Vs. Baldev Kumar Nayyer and others (2006-2) P.L.R. 75** has been pleased to lay down as under:-

> " Where during the course of proceedings before the Tribunal a prayer was made that the petitions be treated as petitions under Section 163-A of the Act by restricting the income of the deceased/injured to less than Rs.40,000/- per annum. The Tribunal accepted this prayer and has allowed the petitions by treating the same as petitions under Section 163-A of the Act. It was contended that in view of the claim of the claimants themselves that the income of the deceased/injured was more than a Rs.40,000/- per annum, the

Tribunal was not justified in treating the petitions to be petitions under Section 163-A of the Act and awarding compensation without going into the question of negligence."

In view of the Division Bench judgment of this Court it has to be held that the persons whose annual income is more than Rs.40,000/- will not be entitled to invoke the provisions of Section 163-A of the Act as the same is a beneficial piece of legislation meant for a specified class of citizens. It is not open for a person to notionally scale down his income so as to invoke the provisions of Section 163-A of the Act and therefore, to defeat the very object of Section 163-A of the Act.

Therefore, the learned Tribunal was right in dismissing the application moved by the petitioner which does not call for any interference by this Court in exercise of revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

January 9,2007
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